

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII

IN THE MATTER OF:

The Blackfeet Indian Tribe, Owner
Government Square
P.O. Box 850
Browning, MT 59417

and

Carl Kipp, Operator
Kipco
c/o Blackfeet Planning Department
Quarters 108
Government Square
Browning, MT 59417

Respondents.

Docket No. CAA-08-2005-0004

**EMERGENCY
ADMINISTRATIVE ORDER**

Proceeding Under § 303 of the
Clean Air Act, 42 U.S.C. § 7603

I. AUTHORITY

1. This Administrative Order ("Order") is issued pursuant to section 303 of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7603. Authority to issue this action is vested in the Administrator of the Environmental Protection Agency ("EPA") by section 303 of the CAA, 42 U.S.C. § 7603. Section 303 of the CAA authorizes the Administrator of the EPA to issue such orders as may be necessary to protect public health or welfare or the environment. This authority has been delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, and further delegated jointly to the Directors of the Montana Office and the Legal Enforcement Program who have been duly authorized to institute this action.

2. Based upon evidence received, EPA has determined that the renovation activities, specifically jack hammering into the walls, at the walk-in vault located within the Blackfeet Tribal Headquarters building, may have released asbestos and asbestos dust into the air which may present an imminent and substantial endangerment to human health or the environment.

3. EPA attempted to consult with the appropriate Blackfeet Tribal authorities and confirm the accuracy of the information on which the proposed action to be taken is based prior to taking any action under this section in accordance with section 303 of the CAA, 42 U.S.C. §7603. Specifically, EPA called the Tribal Chairman on January 18 and 20, 2005, and the Tribal Environmental Director on January 11 and 19, 2005. EPA faxed the Tribal Chairman a letter regarding the situation on January 19, 2005. EPA also met to discuss the matter with the Tribal Environmental Director and Tribal Vice Chairman, respectively, on January 20, 2005.

4. EPA hereby takes this action pursuant to section 303 of the CAA, 42 U.S.C. § 7603, having determined that the issuance of this Order is necessary to protect public health or the environment.

II. PARTIES BOUND

5. The Blackfeet Indian Tribe ("Tribe"), a federally-recognized Indian Tribe, owns the Blackfeet Tribal Headquarters building ("tribal building") which includes, but is not limited to, a room referred to as the "walk-in vault" in Browning, Montana, within the exterior boundaries of the Reservation.

6. Carl Kipp is a contractor retained by the Tribe to perform renovations on the tribal facility.

7. This Order shall apply to and be binding upon the Tribe and Mr. Kipp (hereafter referred to collectively as "Respondents") and their respective officers, directors, employees, agents, contractors, successors and assigns.

8. No change in ownership, corporate, or partnership status relating to the tribal facility described in this Order will in any way alter the status or responsibility of Respondents under this Order. Any conveyance by Respondents of title, easement, or other interest in the facility described herein, or a portion of such interest, shall not affect Respondents' respective obligations under this Order.

9. Respondents shall provide a copy of this Order to all contractors, subcontractors, inspectors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the date of Respondents' receipt of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order.

10. Any documents transferring ownership and/or operations of the tribal building described herein from Respondents to a successor-in-interest shall include written notice of this Order. In addition, Respondents shall, no less than thirty (30) days prior to transfer of ownership or operation of the facility, provide written notice of this Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

11. This Order shall be effective upon issuance and shall remain in effect for a period of not more than sixty (60) days, unless the Administrator brings an action pursuant to the first sentence of section 303 before the expiration of that period. If the Administrator brings such an action within the 60-day period, this Order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

III. FACILITY DESCRIPTION

12. The walk-in vault is a 20' by 40' foot room with 10' ceilings (approximately 2,800 square feet). The walls of the walk-in vault are lined with fireproof material. The walk-in vault is located in the Blackfeet Tribal Headquarters building ("tribal building") in which approximately 75 people are employed and work on a daily basis. The walk-in vault, along with the remainder of the tribal building, was constructed in approximately 1970. The tribal building originally was owned and occupied by the Bureau of Indian Affairs, Blackfeet Agency ("BIA"). BIA subsequently gave the tribal building to the Tribe when BIA built itself a new building.

IV. FINDINGS OF FACTS

EPA has received evidence of the following:

13. The walk-in vault and tribal building are owned by the Tribe.
14. The Tribe retained Mr. Kipp to perform renovation work on the tribal building and walk-in vault.
15. EPA has reason to believe that fireproof material in the walls of the walk-in vault may contain asbestos.
16. Approximately 75 members of the Blackfeet Indian community work on a daily basis in the tribal building and in close proximity to the walk-in vault.
17. For a two week period beginning approximately January 4, 2005, Mr. Kipp commenced renovating the walk-in vault with a jackhammer as part of a building-wide improvement project that began July 2004. The work was conducted during regular business hours without performing any prerequisite testing, using adequate safety measures, or evacuating the building. Throughout the period of Mr. Kipp's two week renovation activities on the walk-in vault, employees continued to work in the tribal building except for the first day of construction when the employees were excused from work.
18. Tribal employees have reported dust on desks and possibly discarded debris in and around the walk-in vault as a result of the renovation activities.
19. At times during the renovation of the walk-in vault, the dust was so thick that it was not possible to see across the room.
20. As a result of the renovation activities associated with the walk-in vault, in particular jack hammering the walls, the dust emitted into the ambient air and inhaled by tribal building employees may contain asbestos.

Effects on Human Health or the Environment:

21. Disturbed asbestos may release asbestos fibers that pose health hazards to workers and residents.

22. Asbestos is a carcinogen. Asbestos fibers, when inhaled, can cause diseases which disrupt the normal functioning of the lungs. Three specific diseases have been linked to asbestos exposure: asbestosis (a fibrous scarring of the lungs), lung cancer and mesothelioma (a cancer of the lining of the chest or abdominal cavity). These diseases do not develop immediately after inhalation of asbestos fibers; it may be 20 years or more before symptoms appear.

V. CONCLUSIONS OF LAW

23. Respondents Tribe and Mr. Kipp are “persons” within the meaning of sections 302(e) and 303 of the CAA, 42 U.S.C. §§ 7602(e) and 7603.

24. The fireproof material lining the walk-in vault is a “pollution source” within the meaning of section 303 of the CAA, 42 U.S.C. § 7603.

25. The dust created by jack hammering into the walk-in vault is an “emission source” within the meaning of section 112 of the CAA, 42 U.S.C. § 7412.

26. The dust created by jack hammering into the walk-in vault is causing or contributing to the pollution of the surrounding environment.

27. EPA has received evidence that the renovation operations of the walk-in vault is presenting an imminent and substantial endangerment, or threat thereof, to public health and welfare.

28. The action required by the Respondents in this Order are necessary to protect public health or welfare.

VI. ORDER

29. Based on the above and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect public health or the environment. EPA, therefore, hereby orders Respondents to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order and all applicable laws.

VII. WORK TO BE PERFORMED

30. Respondent Tribe shall immediately but no later than one (1) business day following receipt of this Order, evacuate and close-off the tribal building and cease and desist renovation activities until the dust and air sampling referenced below in paragraph 31 is completed, the results are reviewed, and a determination is made that no asbestos threat exists. Upon evacuation of the tribal building, the Tribe shall post notices at all entrance points to the building prohibiting access except for authorized persons involved in sampling and cleanup activities.

31. Immediately but no later than ten (10) calendar days after the effective date of this Order, Respondent Kipp must hire a certified asbestos inspector to inspect the building and collect samples of the air, dust, debris and fireproofing material for asbestos and other pollutants.

32. If the sample results show that the tribal building is contaminated with asbestos or other pollutants, Respondent Tribe shall hire a certified asbestos contractor to clean-up the building, commencing within fourteen (14) days of receiving the sample results. The Tribe shall keep the building closed until such time as the asbestos clean-up is completed if asbestos is found inside the tribal building.

33. If the samples results are negative and no asbestos contamination is detected, Respondent Kipp shall immediately notify the EPA and Tribal representative designated in

paragraphs 44 and 45 below. Following notification to and consent by EPA and the Tribal Environmental Office, tribal building use and occupancy may resume.

34. Respondent Kipp shall provide copies of all sampling results to the EPA and Tribal representative named in paragraphs 44 and 45 within five (5) days of receipt.

VIII. ACCESS AND PERMITS

35. Respondent Tribe shall provide access at all reasonable times to the tribal building and to all records and documentation relating to conditions at the tribal building and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives for the purposes of oversight of and implementation of this Order.

36. Respondent Tribe shall use best efforts to assure that EPA personnel or authorized representatives are allowed access to any contractor utilized by Respondents in implementing this Order.

37. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law.

38. Respondents shall notify the EPA representative identified in paragraph 44 in writing at least ten (10) calendar days before engaging in any clean-up activities at the tribal building. Respondents shall allow EPA or Tribal Environmental Program representatives to be on-site at the time of any clean-up activities.

IX. AVAILABILITY AND RETENTION OF INFORMATION

39. The administrative record supporting this Order shall be available for public review at the EPA Region 8 Montana Operations Office, 301 South Park, Helena, Montana from 8 a.m. to 5 p.m., every Federal business day.

40. Respondents shall make available to EPA and shall retain, during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in its

possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of work under this Order.

41. After the three (3) year period of document retention, Respondents shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by EPA, shall deliver the documents to EPA.

42. Respondents may assert confidentiality claims pursuant to 40 C.F.R. part 2.

43. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondents.

X. NOTICES

44. Respondents shall provide copies of all written plans, reports or sampling results required to be submitted under this Order to the following EPA representative:

Brenda South
U.S. Environmental Protection Agency
Region 8, (8ENF-AT)
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-7076
Facsimile: (303) 312-6191

45. Respondents must also provide copies of all written plans, reports or sampling results required to be submitted under this Order to the following tribal environmental representative:

Gerald Wagner, Director
Environmental Program
Blackfeet Tribe
P.O. Box 2029
Browning, MT 59417
Telephone: (406) 338-7421
Facsimile: (406) 338-7451

46. If the date for submission of any item or notification required by this Order falls upon a weekend or federal holiday, the time period for submission of that item or notification is extended to the next federal working day following the weekend or holiday.

XI. RESERVATION OF RIGHTS

47. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondents as may be necessary.

48. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the CAA or any other applicable law.

49. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondents, to request that Respondents perform additional tasks, and the right to perform any portion of the work herein.

50. Compliance by Respondents with the terms of this Order shall not relieve Respondent of its obligation to comply with the CAA and/or any other applicable Federal law or regulation, and any condition of any permit issued under the Act or any other applicable law or regulation.

XII. FAILURE TO COMPLY

51. Pursuant to section 303 of the CAA, 42 U.S.C. § 7603, the Administrator may bring an action in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

52. The Administrator also may bring an action pursuant to section 113 of the CAA, 42 U.S.C. § 7413, to issue an administrative penalty order, an administrative compliance order, bring a civil judicial action, or request the Attorney General to commence criminal action.

XIII. OPPORTUNITY TO CONFER AND MODIFICATION

53. Respondents have the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If Respondents desire a conference, Respondents must contact EPA to schedule such a conference within seven (7) calendar days of receipt of this Order. Any conference shall not interfere with any of the requirements and related timeframes specified in the "Work to Be Performed" section above.

54. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondents.

55. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XIV. NOTICE OF INTENT TO COMPLY

56. Each Respondent shall notify the EPA representative identified in paragraph 44 within five (5) calendar days of the effective date of this Order whether it intends to comply with the terms of the Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondents may make in their notice(s), and shall not affect Respondents' obligation to implement the Order.

57. Failure of Respondents to provide notification to EPA of intent to comply within this time period shall be deemed a violation of this Order.

XV. EFFECTIVE AND TERMINATION DATES

58. This Order shall become effective upon receipt.

59. Modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondents are sent a copy by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

60. This Order shall terminate upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that the requirements of this Order have been satisfactorily completed or after sixty (60) days of the effective date of this Order, whichever occurs first. In the event that the Administrator brings an action in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution, the Order shall remain in effect for an additional fourteen (14) days or for such longer period as may be authorized by the court in which such action is brought.

XVI. SEVERABILITY

61. If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, Respondents shall remain bound to comply with all provisions of this Order not invalidated.

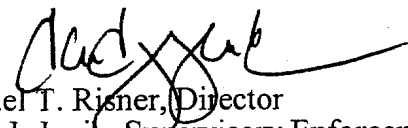
IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY REGION 8, Complainant.


Date: _____

By:
John F. Wardell, Director
Montana Office

Date: 1/21/05

By: 
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 1/21/2005

By: 
Amy Swanson, Enforcement Attorney
Colorado Atty. Reg. No. 26488
U.S. EPA Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Telephone: 303/312-6906
Facsimile: 303/312-6953

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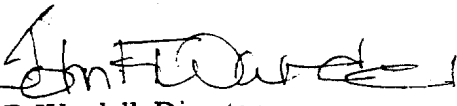
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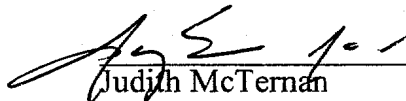
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached EMERGENCY ADMINISTRATIVE ORDER was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of same was sent via Certified Mail, Return Receipt Requested, to:

William Talks About, Chairman
Blackfeet Tribal Business Council
Government Square
P.O. Box 850
Browning, MT 59417

Carl Kipp, Operator
Kipco
c/o Blackfeet Planning Department
Quarters 108
Government Square
Browning, MT 59417

1/21/2005
Date


Judith McTernan